

July 28, 2009

William J. McGinley
202-457-6000
wmcginley@pattonboggs.com

VIA E-MAIL: SWALTHER@FEC.GOV

The Honorable Steven T. Walther
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Supplement to
AOR 2009-13

Re: FEC AOR 2009-13
Black Rock Group

Dear Chairman Walther:

These comments are submitted on behalf of our client, Black Rock Group ("BRG"), regarding today's debate during the Federal Election Commission's ("Commission") open meeting regarding Advisory Opinion Request 2009-13 ("BRG AOR"). Initially, we wish to thank the Commission and staff for the time and effort devoted to the BRG AOR. We appreciate your efforts and hope that the Commission can reach a consensus on an Advisory Opinion that provides clear guidance concerning BRG's permissible political consulting services for multiple limited liability company ("LLC") clients who will sponsor independent expenditures ("IEs").

During the past two open meetings, questions have been asked about whether BRG's multiple LLC clients will share or otherwise "pool" the costs of its services. The answer is no. BRG will enter into separate and distinct contracts with each LLC client. See FEC AO 2009-02 ("Mr. Hanauer will be the final decision-maker on all TPN actions, although TPN's employees and consultants might advise TPN in the making of these communications."). The contract for each LLC client will set forth the compensation and expense reimbursement terms for BRG's services for that LLC. We anticipate that BRG's consulting services will be paid for on a monthly retainer arrangement that will constitute the normal and usual charge for such services. BRG's charge will not vary depending on the number of LLC clients BRG has. In short, there will be no cost sharing between the LLCs.

In addition, BRG hopes, and expects, that the Commission will be able to reach consensus for the guidance BRG seeks so that it may comply with the Act and Commission regulations when providing services to multiple LLC clients. If the Commission cannot reach four votes for Question 2 – and we still hope that the Commission will answer Question 2 affirmatively – BRG expects that the Advisory Opinion will provide specific guidance in its answer to Question 3. If the LLCs are not in direct communication with each other and BRG does not convey messages

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between the LLCs, the Commission should make clear that BRG may provide services to multiple LLC clients so long as it does not convey specific information or facilitate meetings or direct communications between two or more LLC clients. As stated by Commissioner Bauerly, we expect the advisory opinion issued by the Commission to clearly provide that BRG's activities will not trigger political committee status for BRG.

Finally, the Act, Commission regulations, Commission enforcement precedents, and the case law are silent on the issue of whether multiple LLCs sponsoring IEs and using a common vendor trigger political committee status. Even during the investigations of political committee status in the 2004 Presidential elections, such as MUR 5440 (The Media Fund), the Commission did not find coordination between The Media Fund, a 527 political organization that aired advertisements critical of then-President Bush, and the Democratic National Committee even though the founder of The Media Fund was simultaneously a member of the DNC executive committee. If that interlocking relationship did not result in a finding of coordination under Commission regulations, a common vendor between two or more LLCs sponsoring IEs must be permissible without triggering illegal coordination or political committee status.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

/s/ William J. McGinley

William J. McGinley

cc: The Honorable Matthew S. Petersen
Vice-Chairman
The Honorable Cynthia L. Bauerly
Commissioner
The Honorable Caroline C. Hunter
Commissioner
The Honorable Donald F. McGahn II
Commissioner
Rosemary C. Smith, Esquire
Associate General Counsel